

**THE  
LEGAL AID  
SOCIETY  
CRIMINAL  
DEFENSE**

Prisoners' Rights Project  
199 Water Street  
New York, NY 10038  
T (212) 577-3530  
[www.legal-aid.org](http://www.legal-aid.org)

John K. Carroll  
*President*

Janet E. Sabel  
*Attorney-in-Chief  
Chief Executive Officer*

Justine Luongo  
*Attorney-in-Charge  
Criminal Defense Practice*

Mary Lynne Werlwas  
*Director  
Prisoners' Rights Project*

September 20, 2021

**VIA ECF**

The Honorable Laura T. Swain  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10006

Re: *Nunez, et al. v. City of New York, et al.*, 11-cv-5845 (LTS) (JCF)

Your Honor,

We are counsel to the plaintiff class in the above-captioned matter. We write to request an emergency conference with the Court in anticipation of filing motions seeking emergency relief and potentially initiating proceedings pursuant to 18 U.S. § 3626(a)(3) ("Prisoner Release Order"). We have advised all parties and the Monitoring Team of this submission, and Defendants have consented to the request for a conference.

We share the grave concerns that the Monitor conveyed in the August 24, 2021 special report (Dkt. Entry 378) and September 2, 2021 status report (Dkt. Entry 380). Prior Monitor's Reports have detailed how mismanagement and a toxic staff culture have caused harm necessitating relief. *See* August 14, 2020 Remedial Consent Order Addressing Non-Compliance (Dkt. Entry 305). The most recent reports of the Monitor demonstrate non-compliance with this order in fundamental respects. (Dkt. Entry 368 at 4-16, Dkt. Entry 360 at 4). These ongoing and serious operational deficiencies, exacerbated by months of mass staff absenteeism, have so degraded security and safety in the jails that class members are in exceptional danger.

Two material developments since the Monitor filed its September 2 report prompt this emergency request. First, on September 10, 2021, the Chief Medical Officer of Correctional Health Services, Dr. Ross MacDonald, wrote the attached letter stating that "in 2021, we have witnessed a collapse in basic jail operations, such that today I do not believe the city is capable of safely managing the custody of those it is charged with incarcerating in its jails, nor maintaining the safety of those who work there." Ex. A.

Second, on September 15, 2021, Commissioner Schiraldi and his staff testified under oath before the New York City Council.<sup>1</sup> That testimony included the following:

- Unstaffed housing units. “Yesterday there were approximately **70...housing units** that did not have a B officer [the officer assigned to work the floor] in them.”<sup>2</sup>
- The scope of staff absenteeism. Of 8,370 uniform members of service, 1,789 of them were out sick on September 14, 2021. 112 of those were newly out sick, 727 were on medically modified status, 68 staff members were out for personal emergency, 93 were out on AWOL, and 27 were out for an FMLA-related reason.<sup>3</sup>
- The protracted process of repairing broken cell doors. “We expect to be able to fix all the doors by February.”<sup>4</sup>
- Lack of capacity at DOC facilities. When asked about how feasible it would be to relocate incarcerated people to units with functioning doors, Commissioner Schiraldi said, “All the facilities right now are pretty much right at the top of capacity. If we had fewer people and we had more staff, it would be totally feasible and the right thing to do. But right now, we’re pretty much at the top of every facility except the women’s facility...but we really don’t have other staff, the only thing we can do, which we are planning to do, through our conversations with CHS, is to open up the clinics in EMTC and have just a few beds there but really we don’t have a lot ability to expand because we don’t have staff.”<sup>5</sup>

When elected officials conducted an emergency tour of several DOC facilities on September 13, 2021, they reported observing people confined in spaces covered in excrement, garbage, cockroaches, and rotting food.<sup>6</sup> One state senator reported witnessing an attempted suicide.<sup>7</sup> Some legislators described “dozens of people without masks packed into cells with overflowing toilets, unable to see their lawyers because they have yet to be booked,” and units in which “people were being held in showers and relieving themselves in plastic bags.”<sup>8</sup>

---

<sup>1</sup> Oversight: The Condition in Our City’s Jails: Hearing Before the Comm. on Criminal Justice, New York City Council (September 15, 2021), <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=890543&GUID=71B97366-3019-425E-813B-DA5DD20A68F1&Options=info/&Search=#>.

<sup>2</sup> Oversight: The Condition in Our City’s Jails: Hearing Before the Comm. on Criminal Justice, New York City Council (September 15, 2021) (Testimony of Dana Wax, Chief of Staff, New York City Department of Correction, beginning at 1:08:20) (emphasis supplied).

<sup>3</sup> September 15 City Council Hearing, *supra* (Testimony of Dana Wax, beginning at 1:35:06).

<sup>4</sup> September 15 City Council Hearing, *supra* (Testimony of Commissioner Schiraldi, beginning at 2:31:20).

<sup>5</sup> *Id.*

<sup>6</sup> Tori B. Powell, *Cockroaches, rotting food, and garbage: Lawmakers say Rikers Island jail conditions are a “public health issue”*, CBS NEWS (Sept. 17, 2021, 12:09 AM), <https://www.cbsnews.com/news/new-york-rikers-island-jail-humanitarian-crisis/>.

<sup>7</sup> *Id.*

<sup>8</sup> Jonah E. Bromwich and Jan Ransom, *10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is in Crisis*, N.Y. TIMES (Sept. 15, 2021), <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html>.

The risk of harm to class members is extraordinary. Eleven class members have died in DOC custody this year, with the most recent death just last night.<sup>9</sup>

Plaintiffs believe that a factual showing will demonstrate the necessity of immediate further relief, including potentially release from custody. Given the complex judicial management of motions seeking a prisoner release order pursuant to 18 U.S. § 3626(a)(3), Plaintiffs seek a conference with Your Honor to address the most efficient procedures for factual presentations and convocation of a three-judge panel if necessary.

We thank the Court for your attention.

Respectfully yours,

/s/

THE LEGAL AID SOCIETY

Mary Lynne Werlwas

Kayla Simpson

David Billingsley

199 Water Street, 6<sup>th</sup> Floor

New York, New York 10038

Telephone: 212-577-3530

Email: [mlwerlwas@legal-aid.org](mailto:mlwerlwas@legal-aid.org)

[ksimpson@legal-aid.org](mailto:ksimpson@legal-aid.org)

[dbillingsley@legal-aid.org](mailto:dbillingsley@legal-aid.org)

/s/

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL

Jonathan Abady

Debra Greenberger

Nairuby Beckles

600 Fifth Avenue, 10th Floor

New York, New York 10020

Telephone: (212) 763-5000

Email: [jabady@ecbawm.com](mailto:jabady@ecbawm.com)

[dgreenberger@ecbawm.com](mailto:dgreenberger@ecbawm.com)

[nbeckles@ecbawm.com](mailto:nbeckles@ecbawm.com)

cc: Steve J. Martin, Monitor  
Anna E. Friedberg, Deputy Monitor  
Georgia Pestana, Corporation Counsel  
Asim Rehman, General Counsel, New York City Department of Correction

---

<sup>9</sup> George Joseph, *Another Death At Rikers, Tenth In City Jails This Year*, GOTHAMIST (Sept. 20, 2021), <https://gothamist.com/news/another-death-rikers-tenth-city-jails-year>.